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OEPR

## Regional Policy on NPL listings

### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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DENVER, CO 80202-2466

September 16, 1998

#### MEMORANDUM

#### SUBJECT:

Background and Regional Policy on Listing Sites on the  
NPL

#### FROM:

Max H. Dodson, Assistance for Ecosystems Protection  
and Remediation

*Signed on September 16, 1998*

Carol Rushin, Assistant Regional Administrator for  
Enforcement, Compliance, and Environmental Justice

*Signed on September 16, 1998*

#### TO:

Region 8 Employees

As we resume proposing and listing sites on the National Priorities List (NPL), we want to provide you with information about the factors that led up to this decision. In addition, this memorandum describes the criteria the Region will use to determine which sites should have a listing package prepared and subsequently be proposed for inclusion on the NPL. As you know, sites that have a preliminary Hazard Ranking System score of 28.5 are candidates for listing.

The last site listed on the NPL by Region 8 was the Summitville Site in 1994. For several years prior to this period, and continuing today, EPA has embarked on program of administrative reforms to address the

criticisms leveled at Superfund to make it faster, fairer, and more efficient. As one of the many initiatives to address the criticism, the Agency embraced the Superfund Accelerated Cleanup Model (SACM) initiative. As listing on the NPL became more and more unpopular, we looked to a "toolbox" of authorities, including RCRA, state voluntary cleanups, non-time critical response actions and the Clean Water Act to achieve the cleanups. This also was a time when the Superfund program was overwhelmed with work. We concentrated on what was already "on our plate" rather than increasing the sites in the pipeline. We tried to find alternative ways to manage sites instead of proposing them for the NPL.

Conditions have changed in the past four years. Of the Region's 45 sites on the NPL, we have completed construction at 16. Construction is underway at 26 more. We have learned valuable lessons from SACM and are implementing other reforms which are applicable to speeding up cleanups and making enforcement fairer. At the same time, we have learned that some of the alternatives we tried were not as quick, reliable and lasting as first thought and that our priority-setting process designed to address worst-sites first has not been as clear and objective as we would like.

The need for NPL listing as a credible cleanup tool still remains:

- It is the only tool that provides a clear structure for prioritizing sites and allocating national funding and FTE among Regions for the cleanup of priority sites.
- It gives EPA access to funding when PRPs are not available to do the full cleanup.
- It provides much needed leverage to encourage PRPs to conduct full cleanups under the threat of a fund-lead takeover and treble damages.
- It provides a clear, understandable structure for proceeding with the cleanup. Because we have significant experience with this process, we are able to move faster.
- Listing better defines the role of the state and community in the decision-making process and provides funding for community technical assistance.
- The listing-delisting process provides legal finality to PRPs and closure and certainty to property owners.

### **Listing Criteria**

The following criteria, at a minimum, will be used by EPA Response Managers to determine whether to recommend that a site be listed:

- Degree of risk to human health or the environment.
- State recommendation that the site be listed.
- Likelihood of adequate and timely cleanup by others under non-CERCLA authorities.
- Degree of public or Congressional concern that the site be listed.

### **Expectations**

Our expectations and policies at this point are the following:

- All sites that could score 28.5 are potential NPL candidates, but obviously not all will be listed. Because a decision on which sites to propose for listing will come out of an internal decision-making process, it is inappropriate for anyone to suggest that a particular site will not be proposed for listing no matter what the site circumstances might be.
- Listing is an effective tool that is appropriate for certain sites.
- The Superfund Program has made significant improvements since the last site was listed. These reforms will be implemented as appropriate in managing any new NPL site.

We believe all Superfund employees should understand the purpose, procedures and impacts of listing a site on the NPL. Teams working on candidate sites will likely get the bulk of the questions, and they will need to develop site-specific communication strategies. However, we are providing the attached question and answer sheet that should help you respond to most of the common issues that arise. More detailed questions can be referred to the NPL Coordinator, David G. Williams at 312-6757.

### **Attachment**

cc: Bill Yellowtail  
Jack McGraw  
Kerry Clough  
Pat Hull  
Tom Speicher  
Nola Cooke

## **NPL LISTING QUESTIONS & ANSWERS FOR EPA STAFF USE**

**EPA said it was trying to avoid listing sites. Why are you suddenly listing sites on the NPL again?**

- The NPL is primarily an information and management tool which guides EPA in determining which sites in the nation warrant the priority allocation of Agency resources for investigation of site risks and cleanup action. Sites which the Region considers to be priorities for cleanup should be listed on the NPL.
- There are some sites that pose such a risk, are so complex and so costly to clean up that NPL listing is the best way to address them. Listing on the NPL makes these sites a priority for cleanup.
- Superfund has limited resources. EPA plans to distribute those funds to sites that pose the greatest risk and are most complex. Sites not on the NPL will have to "get to the back of the line" for resource allocations.
- Now that the sites presently listed in the Region are well on the way to being cleaned up we have the time and resources to handle additional sites.

#### **What are the benefits of being on the NPL?**

- Listing a site on the NPL increases the Superfund money available for cleanup. Without this funding, some sites will not be cleaned up.
- Listing a site makes funding available for cleanup in the event there is no PRP or limited PRP liability. It also eliminates delays in cleanup if PRP negotiations break down.
- When a site is proposed for the NPL, other resources also become available: staff, TAGs, ATSDR, etc.
- The listing-delisting process provides closure and certainty to PRPs and property owners.
- Listing a site makes it easier for trustees to pursue Natural Resource Damage claims.
- The availability of funding for cleanups coupled with the ability to recover treble cleanup costs from reluctant PRPs, increases EPA's leverage on PRPs for implementing cleanups.
- EPA can provide a greater degree of legal finality to responsible parties at NPL sites than at non-NPL sites.

#### **Won't proposing a site for the NPL stigmatize the area?**

- While proposing the site for the NPL does indicate that the site is contaminated, it also provides a means for addressing the risks at the site. The good news is that the problems will be addressed and the contamination problem controlled so that the site can be returned to productive, safe use.

- It is the presence of contamination in the area that makes it less desirable, not the NPL listing. NPL listing provides a means for reducing contamination threats.
- NPL listing clarifies the status of a site and provides finality when the cleanup is complete. It gives lenders clear notice of the cleanup's completion (delisting) and of no liability (covenants not to sue).

### **What will proposing a site for the NPL do to property values?**

- Property values and NPL listing are not directly correlated, probably because many factors, such as location, school districts, proximity to services, affect the desirability of property. At some sites, property continues to sell and be developed. At others, property values take a temporary dip until the cleanup is completed.
- In our experience, the presence of contamination on a property, whether listed on the NPL or not, may affect the value of the property. Superfund listing expedites the cleanup process. Once the cleanup is completed, EPA has found that property values improve.
- EPA can reduce the impacts on property. Sometimes uncertainty about the status of a property is a concern to lenders. EPA can help property owners clarify the status of their property by sharing its information with lenders and realtors. EPA provides property owners with comfort letters when their property is free of contamination and also assists with prospective purchaser agreements which spell out the responsibilities of prospective purchasers.

### **Can I be held responsible for pollution on my property?**

- EPA understands that personal liability is an area of concern. This is especially important for new property owners and prospective purchasers, as well as for lending institutions that will be responsible for the mortgage.
- EPA will not take actions against a residential homeowner, unless the owner polluted the site or made existing pollution problems worse.
- By working with EPA in relation to a specific Superfund property, prospective purchasers can ensure they won't be held responsible for pollution that was present on the property prior to the time of purchase.
- EPA may work with a potential purchaser of a property to enter into an agreement not to sue the purchaser for contamination that existed at the time of purchase.

- It is EPA's policy not to pursue cleanup cost repayment from lenders who merely provide money to an owner or developer of a contaminated property, provided that lenders do not participate in daily management of the property.

**Superfund is a long, costly process. How are you going to expedite this?**

- Over the years, EPA has learned important lessons that help us expedite the cleanup process. This knowledge has reduced cleanup time by 20% over the past five years. The average price of cleanup has also decreased by about 40% over the same time period. Because we have learned what cleanup techniques are best suited to specific contamination situations, we now are able to more quickly identify the appropriate cleanup approach.
- Actually, the Superfund process often proceeds more quickly than less well-defined methods because the process is clearly defined, funding is available and the legal authorities are well established.

**Why not continue cleaning up sites without listing? Many sites are progressing successfully but aren't on the NPL, such as Kennecott, Murray Smelter and Pallas Yard.**

- Sites on the National Priorities List receive resources before non-listed sites. If a site is not listed on the NPL, it is, by definition, of lower priority and so less deserving of funding and staff time. So to continue cleaning up high priority sites, EPA is appropriately identifying them for inclusion on the NPL.
- There may be rare instances in future where specific site conditions warrant proceeding without listing, but the standard process will be to list appropriate sites.

**Why can't the State or PRP do voluntary cleanups or removals instead of listing?**

- There is plenty of cleanup work out there to go around. States will continue to do voluntary cleanups for those sites that are not complex and have willing PRPs. In addition, EPA has, and will continue, to encourage states to take the lead in Superfund site cleanups.
- CERCLA and the NCP set criteria for removal and remedial actions. Generally, removals are appropriate for those sites that require emergency response or which can be addressed in one year or less and for under \$2,000,000. Sites that are more complex must be handled under the remedial process and proposed for the NPL.

- Only the NPL process can provide those conducting the cleanup and property owners with the certainty and finality associated with covenants not to sue.

**Can we only use the remedial process where there is an NPL listing?**

- No. The remedial process and NPL listing are two different things. NPL listing is a priority-setting process that assures that limited federal funds go only to high priority sites. It does not limit the use of Fund money for all activities prior to construction and in no way limits the Agency's ability to take early action to stabilize sites or to get responsible parties to perform the work under order. Indeed, EPA may still sue a party to perform remedial construction where there is no NPL listing.

**Are there benefits to cooperative parties in the remedial process that are not available in the removal process?**

- Yes. EPA can provide legal finality in the remedial process through the use of future liability covenants. EPA can no longer provide such protections for those performing removals. In addition, EPA's thorough cleanup work and delisting under the remedial process provide more certainty regarding the possibility of future exposure and potential for additional future EPA cleanup activities.

**What will happen to sites that are already on a non-listing track? Is EPA going to list those sites now?**

- Listing is always an option for high-priority sites if progress is not being made. In order to provide consistency to stakeholders with whom EPA has developed site strategies, EPA does not intend to revisit those strategies unless circumstances compel a change.

**There is no need for further NPL listings because all the seriously contaminated sites in the Region been already identified and placed on the NPL.**

- While a number of the most obviously contaminated sites have been identified and are undergoing cleanup, there continue to be sites discovered" like Summitville" where NPL listing is critical to accomplishing the cleanup.

**Doesn't the state have to pay a share of the costs?**

- With the exception of costs associated with emergency or removal

actions, states must pay 10% of the cleanup costs at NPL sites where federal funds are expended on the cleanup.

- All studies leading up to the actual construction work can be 100% EPA funded.

For additional information, please contact Barry Levene.



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